

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 16 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

M/S.GUJARAT TOOLROOM LTD

Versus

M/S.GODGRACE ELECTRICALS PVT LTD

Appearance:

MR TS NANAVALI for Petitioners
MR JC VYAS for Respondent No. 1
MR ST MEHTA APP for Respondent no.2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/09/2000

ORAL JUDGEMENT

This Revision Application under section 397 read with section 401 CRPC has been preferred by the accused in Criminal Case No. 1312/94.

The aforesaid Criminal Case No. 1312/94 has been registered in the Court of the learned Metropolitan Magistrate, Court No. 19, Ahmedabad, pursuant to the complaint lodged by one Rambhai Danumal Bhimani, Director in Godgrace Electronics P.Ltd.-the respondent no.1 herein. It was alleged that the complainant had been given an understanding that the accused no. 1 Company

had technical collaboration with some Swiss company. The Chief Executive of the accused no. 1 Company, the accused no. 3 had assured the complainant that the accused no. 1 Company would be able to supply Mould for cassettes as per the specification given by the complainant. In part payment of the agreed price, the complainant had paid a sum of Rs. 2,22,000/- to the accused no. 1 Company. However, the accused no. 1 Company was unable to prepare the Mould which could produce the cassettes as per the specification given by the complainant. It is also alleged that though the accused no. 1 Company had not supplied the Mould, had prepared a bill for a sum of Rs. 7,94,475/-. Though the goods were alleged to have been delivered to the complainant, no such goods were infact delivered to the complainant. The accused are thus alleged to have committed offences punishable under sections 114, 420 and 468 IPC. The learned Magistrate having issued process upon the accused, the accused filed application Ex. 3 for discharge under section 245 CRPC. The said application has been rejected by the learned Magistrate by his order dated 12th October, 1995. Feeling aggrieved, the accused have preferred the present Revision Application.

Mr. Nanavati has submitted that the entire complaint does not spell out any offence having been committed by either of the accused. The only allegation is against the accused no. 3, Chief Executive in the accused no. 1 Company. Other accused have wrongly been arraigned as accused. Further no element either of cheating or that of forgery has been made out. He has referred to entire correspondence which spells out the agreement between the parties. He has submitted that according to the said agreement, the complainant had agreed to make 80% of the payment before delivery of the Mould. Since the complainant failed to make the said payment, the accused have instituted the Civil Suit for recovery of the bill amount and the complainant, with a view to avoiding his liability to pay the bill amount, has filed the complaint against the accused. The said complaint is, therefore, vexatious and amounts to abuse of process of law.

Mr. Vyas has specifically relied upon the averments made in paragraph-7 of the complaint. He has submitted that on 30th September, 1993, though the Mould in question was not delivered to the complainant, the accused had prepared a bill for the sum of Rs. 7,94,475/-and had indicated therein that the Mould had already been delivered to the complainant. Upon inquiry,

the complainant was informed that the said endorsement was made keeping in view the liability of the accused towards Income Tax and the Excise. He has submitted that this statement made in the bill was false. Such false statement had been made with a view to avoiding the liability under the warranty. The period of warranty would start from the date of delivery and thus the warranty period would commence though the Mould was not delivered to the complainant. Thus, the complainant would suffer a damage. Making a false statement with a view to injure somebody (the complainant in the present case) amounts to 'Forgery' within the meaning of section 463 IPC. Thus, commission of offence by the accused has been clearly made out. The learned Magistrate, therefore, was right in rejecting the application made by the accused.

Upon perusal of the complaint and the correspondence between the parties which has been produced before the court below, it does appear that the dispute between the parties is of civil nature, and in fact, the accused have instituted a civil suit for recovery of its dues. Besides, the complaint discloses inability of the accused to prepare a Mould to the satisfaction of the complainant, however, no dishonest intention has been spelt out as defined under section 415 IPC. Besides, the bill for a sum of Rs. 7,94,475/referred to in the complaint may not be acceptable to the complainant, but does not fall within the four corners of the meaning of 'forgery' under section 463 IPC. Hence, in my view, no offence has been made out against either of the accused. Complaint is, therefore, not maintainable.

In view of the above discussion, the Revision Application is allowed. The application Ex. 3 made by the accused is allowed. The accused are ordered to be discharged under section 245 CRPC. Rule is made absolute.

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JOSHI